

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: ZOSTAVAX (ZOSTER VACCINE : MDL NO. 2848
LIVE) PRODUCTS LIABILITY :
LITIGATION :
: _____
THIS DOCUMENT RELATES TO: :
: _____
SUE ANN ELMEGREEN :
: CIVIL ACTION NO. 17-cv-2044
v. :
: _____
MERCK & CO., INC., et al. : _____

PRETRIAL ORDER NO. 372

AND NOW, this 4th day of August, 2021, for the
reasons set forth in the foregoing Memorandum, it is hereby
ORDERED that:

(1) the motion of David R. Elmegreen, as the trustee
of The Sue A. Elmegreen Trust, to be substituted as the
plaintiff pursuant to Rule 25 of the Federal Rules of Civil
Procedure is GRANTED;

(2) the motion of Merck & Co., Inc. and Merck Sharp &
Dohme Corp. to dismiss (incorrectly denominated as a motion for
summary judgment) for failure to substitute a legal
representative on behalf of the deceased plaintiff Sue Ann
Elmegreen is DENIED;

(3) the motion of Merck & Co., Inc. and Merck Sharp &
Dohme Corp. for summary judgment on plaintiff's claims for
failure to warn is DENIED;

(4) the motion of Merck & Co., Inc. and Merck Sharp & Dohme Corp. for summary judgment on plaintiff's claim for breach of express warranty is GRANTED; and

(5) the motion of Merck & Co., Inc. and Merck Sharp & Dohme Corp. for summary judgment on plaintiff's claim for strict liability design defect is GRANTED.

BY THE COURT:

/s/ Harvey Bartle III

J.